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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,512	07/01/2003	Robert L. Muller JR.	22526	4448

535 7590 03/22/2005

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EXAMINER

JOHNSON, STEPHEN

ART UNIT	PAPER NUMBER
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3641

DATE MAILED: 03/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/611,512

Applicant(s)

MULLER, ROBERT L.

Examiner

Stephen M. Johnson

Art Unit

3641

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 December 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 9-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-19 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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1. Applicant's election with traverse of species A in the reply filed on 10/7/2004 and 12/27/2004 is acknowledged. The traversal is on the numerous grounds and is found persuasive.

Species A and B are combined in this application and an action on claims 1-7 and 9-19 follows. Claim 8 remains withdrawn from consideration as being directed to a non-elected species.

2. Claims 6-7, 9, 11-15, and 17 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 17 claims "2 to 155 layers" without clarifying what layers or whose layers are intended.

The term "high tensile strength" in claims 6, 9, and 11-12, is a relative term which renders the claim indefinite. The term "high tensile strength" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The term "high tensile strength" is a relative term that does not clearly determine strengths of the ductile metal, alloy, or fiber are intended.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 6-7, 10-11, and 16-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Patriot.

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Patriot discloses an armor comprising:

- a) a woven ballistic fabric; 30
- b) weft and warp yarns; 30 (see fig. 5)
- c) metal disks located at the cross over locations; and 35; col. 5, lines 35-40
- d) at least one layer of ballistic fibers for trapping projectiles. 30 (second layer)

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2-3, 9, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patriot in view of Nishimura et al..

Patriot applies as previously recited. However, undisclosed is a woven fabric whose material type is an aramid yarn. Nishimura et al. teach a woven fabric whose material type is an aramid yarn (see col. 5, lines 36-50 and example 1). Applicant is substituting one type of woven fabric for another in an analogous art setting as explicitly encouraged by the secondary reference (see col. 5, lines 36-40). It would have been obvious to a person of ordinary skill in this art at the time of the invention to apply the teachings of Nishimura et al. to the Patriot armor and have an armor with a different type of woven fabric.

7. Claims 1-7, 9-12, and 16-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Harpell et al. (527).

Harpell et al. (527) disclose an armor comprising:

- a) a woven ballistic fabric; col. 22, lines 36-53

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- |   |                                       |
|---|---------------------------------------|
| b) weft and warp yarns;   | col. 22, lines 36-53;<br>figs. 15, 18 |
| c) metal disks located at the cross over locations;                 | 16, see fig. 18                       |
| d) at least one layer of ballistic fibers for trapping projectiles; | 12c                                   |
| e) a woven ballistic fabric of aramid fiber;                        | col. 22, lines 49-51                  |
| f) a plurality of layers.   | see fig. 4                            |

8. Claims 13-15 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

9. Applicant's arguments with respect to claims 1-7 and 9-19 have been considered but are moot in view of the new ground(s) of rejection.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen M. Johnson whose telephone number is 703-306-4158. The examiner can normally be reached on Tuesday through Friday.

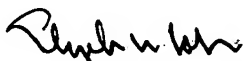
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 703-306-4198. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-4177.

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**STEPHEN M. JOHNSON**  
**PRIMARY EXAMINER**

SMJ

March 16, 2005

Stephen M. Johnson  
Primary Examiner  
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